

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
DAVID KUSHNER,	)	
	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America brings this action at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States for entry of the Consent Judgment agreed to and signed by David Kushner and Nanci Kushner, deceased, reducing to judgment unpaid federal income taxes, penalties, and interest in the amount of \$480,000 for tax years 2004, 2005, 2006, and 2007. In support of this action, the United States alleges as follows:

**JURISDICTION & VENUE**

1. Jurisdiction is conferred upon the district court by virtue of 28 U.S.C. §§ 1331, 1340 and 1345 and 26 U.S.C. §§ 7401, and 7402.
2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1396 because the liabilities at issue accrued in, and defendants are residents of, Bergen County, NJ which is located in this judicial district.

## **PARTIES**

3. The plaintiff is the United States of America.

4. David Kushner resides in Bergen County, New Jersey, within the jurisdiction of this Court.

## **FACTUAL BACKGROUND**

5. On June 7, 2018, the United States filed an amended complaint against David and Nanci Kushner to reduce to judgment unpaid federal income tax liabilities assessed against David Kushner for tax year 2004, and against David and Nanci Kushner for tax years 2005, 2006, and 2007. *See United States v. David Kushner, et al.*, No. 2:17-cv-2372-SDW-LDW, ECF. No. 41 (D. N.J. June 17, 2019).

6. The parties reached what the Court described as a “settlement in principle” at a settlement conference in that collection suit on March 14, 2019. *Kushner*, No. 2:17-cv-2372-SDW-LDW, ECF. No. 58, 60-Day Order Administratively Terminating Action.

7. This Court accordingly entered an Order that, among other things, administratively terminated the action and dismissed the suit within 60 days unless the parties stipulated to the dismissal of the action under Federal Rule of Civil Procedure 41 or requested that the action be reopened if the settlement in principle could not be consummated. *Id.*

8. Final settlement was obtained on June 12, 2019, when a delegate of the Attorney General of the United States accepted a written offer that the Kushners made on April 22, 2019.

9. Accordingly, on June 13, 2019, the parties filed a stipulation of dismissal without prejudice that was entered by the Court on June 17, 2019. *Id.* at ECF. Nos. 61, 62.

10. As part of the settlement agreement, the Kushners agreed to, among other things:

- a. Sign a Consent Judgment for \$480,000 for the tax liabilities described in Paragraph 6 that would only be filed and enforced if the Kushners breached the settlement agreement. *See* Exhibit A, Consent Judgment; Ex. B, April 22, 2019 Settlement Acknowledgment Letter and June 12, 2019 DOJ Acceptance Letter.
- b. Make 60 payments in \$8,000 monthly installments, beginning the earlier of July 1, 2019 or 60 days from receiving formal notification that the United States accepted the settlement offer. *Id.*
- c. Comply with all federal tax filing and payment obligations while the settlement agreement is in effect. *Id.*
- d. Take all reasonable steps to market and sell the real property at 24 Adams Drive, Cresskill, NJ 07626. *Id.*
- e. Waive any defense that the 10-year collection statute of limitations at 26 U.S.C. § 6502(a)(1) has expired if the Kushners default on the settlement agreement and the Government seeks relief according to the Consent Judgment. *Id.*

11. The Settlement Agreement also included the following breach terms:

- a. The Kushners were entitled to cure no more than three monthly payments before being in final breach of the Settlement Agreement;
- b. The Kushners were entitled to cure no more than two failures to timely file their federal tax returns before being in final breach of the Settlement Agreement; and/or
- c. The Kushners could fail to timely pay their federal income taxes no more than three (3) times before being in final breach of the Settlement Agreement. *Id.*

12. On April 4, 2022, counsel for Nanci Kushner informed United States counsel that Mrs. Kushner had passed away. By information and belief, Mrs. Kushner passed away on or around March 21, 2022.

13. The United States brings this action solely against David Kushner because, by information and belief, an estate has not been established for Nanci Kushner and an executor has not been appointed.

#### **COUNT I - BREACH OF SETTLEMENT AGREEMENT**

14. The United States realleges Paragraphs 1 through 14 and incorporates them into this Count.

15. By letter dated April 4, 2022, the United States informed the Kushners that they were in final breach of the Settlement Agreement. Ex. C, Final Breach Letter.

16. In violation of the Settlement Agreement:

- a. The Kushners failed to timely cure their missed monthly installment payments for January through April 2022;

- b. Before her death, Mrs. Kushner failed to file a federal income tax return for tax years 2018, 2019, and 2020; and
- c. Mr. Kushner failed to timely pay his federal income taxes for 2018, 2019, and 2020, resulting in a total tax liability in the amount of \$184,044 as of August 5, 2022;
- d. Mr. Kushner has failed to make a monthly installment payment since July 7, 2022.

17. Mr. Kushner is jointly and severally liable for the amounts owed due to breach of the Settlement Agreement.

18. Pursuant to the Settlement Agreement, the United States informed the Kushners of these breaches by formal letters dated August 10, 2021; December 15, 2021; and January 14, 2022.

19. Despite these notices, the Kushners failed to timely and fully cure their breach as required by the Settlement Agreement.

20. Defendant is therefore in final breach of the Settlement Agreement.

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WHEREFORE, the United States prays:

A. That the Court enter judgment in favor of the United States and against David Kushner for unpaid federal income taxes, penalties, and interest in the amount of \$480,000 for tax years 2004, 2005, 2006, and 2007.

B. That the Court award the United States such further relief the Court deems appropriate, including the costs of this action.

DATED: March 15, 2023

DAVID A. HUBBERT  
Deputy Assistant Attorney General

s/Joycelyn S. Peyton  
JOYCELYN S. PEYTON  
OLGA L. TOBIN  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
Post Office Box 227  
Washington, D.C. 20044  
Tel: 202-514-6576; 202-307-6322  
Fax: 202-514-6866  
[Joycelyn.S.Peyton@usdoj.gov](mailto:Joycelyn.S.Peyton@usdoj.gov)  
[Olga.L.Tobin@usdoj.gov](mailto:Olga.L.Tobin@usdoj.gov)  
*Counsel for the United States*